

PROVIDING FOR CONSIDERATION OF H.R. 8, DEATH TAX
REPEAL PERMANENCY ACT OF 2005

APRIL 12, 2005.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 202]

The Committee on Rules, having had under consideration House Resolution 202, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 8, the Death Tax Repeal Permanency Act of 2005, under a structured rule. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The rule provides for consideration of the amendment in the nature of a substitute printed in this report, if offered by Representative Pomeroy or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The Committee is not aware of any points of order against the amendment printed in this report. The waiver of all points of order against the amendment is prophylactic in nature.

SUMMARY OF AMENDMENT MADE IN ORDER

Pomeroy: Amendment in the Nature of a Substitute. Immediately eliminates the estate tax for most estates. Increases the estate tax exclusion to \$3 million, effective January 1, 2004. Partially offsets

the cost of increasing the exclusion by freezing existing estate tax rates, eliminating the ability to claim valuation discounts by holding property through partnerships, and restoring the prior law phaseout of the benefit of the graduated rates and exclusion. Repeals the carryover basis rules contained in the 2001 tax bill, in doing so the substitute would continue the favorable current law step-up in basis rules that eliminate capital gains taxes on increases in value before death.

TEXT OF AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Certain and Immediate Estate Tax Relief Act of 2005”.

SEC. 2. RETENTION OF ESTATE TAX; REPEAL OF CARRYOVER BASIS.

(a) **IN GENERAL.**—Subtitles A and E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subtitles, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subtitles, and amendments, had never been enacted.

(b) **SUNSET NOT TO APPLY.**—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to title V of such Act.

(c) **CONFORMING AMENDMENTS.**—Subsections (d) and (e) of section 511 of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such subsections, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsections, and amendments, had never been enacted.

SEC. 3. MODIFICATIONS TO ESTATE TAX.

(a) **IMMEDIATE INCREASE IN EXCLUSION EQUIVALENT OF UNIFIED CREDIT.**—Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (relating to applicable credit amount) is amended by striking all that follows “the applicable exclusion amount” and inserting “. For purposes of the preceding sentence, the applicable exclusion amount is \$3,500,000 (\$3,000,000 in the case of estates of decedents dying before 2009).”.

(b) **FREEZE MAXIMUM ESTATE TAX RATE AT 47 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.**—

(1) Paragraph (1) of section 2001(c) of such Code is amended by striking the last 2 items in the table and inserting the following new item:

“Over \$2,000,000	\$780,800, plus 47 percent of the excess of such amount over \$2,000,000.”.
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(2) Paragraph (2) of section 2001(c) of such Code is amended to read as follows:

“(2) **PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.**—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds \$10,000,000. The amount of the increase

under the preceding sentence shall not exceed the sum of the applicable credit amount under section 2010(c) and \$159,200.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2005.

SEC. 4. VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS; LIMITATION ON MINORITY DISCOUNTS.

(a) **IN GENERAL.**—Section 2031 of the Internal Revenue Code of 1986 (relating to definition of gross estate) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

“(d) **VALUATION RULES FOR CERTAIN TRANSFERS OF NONBUSINESS ASSETS.**—For purposes of this chapter and chapter 12—

“(1) **IN GENERAL.**—In the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092)—

“(A) the value of any nonbusiness assets held by the entity shall be determined as if the transferor had transferred such assets directly to the transferee (and no valuation discount shall be allowed with respect to such nonbusiness assets), and

“(B) the nonbusiness assets shall not be taken into account in determining the value of the interest in the entity.

“(2) **NONBUSINESS ASSETS.**—For purposes of this subsection—

“(A) **IN GENERAL.**—The term ‘nonbusiness asset’ means any asset which is not used in the active conduct of 1 or more trades or businesses.

“(B) **EXCEPTION FOR CERTAIN PASSIVE ASSETS.**—Except as provided in subparagraph (C), a passive asset shall not be treated for purposes of subparagraph (A) as used in the active conduct of a trade or business unless—

“(i) the asset is property described in paragraph (1) or (4) of section 1221(a) or is a hedge with respect to such property, or

“(ii) the asset is real property used in the active conduct of 1 or more real property trades or businesses (within the meaning of section 469(c)(7)(C)) in which the transferor materially participates and with respect to which the transferor meets the requirements of section 469(c)(7)(B)(ii).

For purposes of clause (ii), material participation shall be determined under the rules of section 469(h), except that section 469(h)(3) shall be applied without regard to the limitation to farming activity.

“(C) **EXCEPTION FOR WORKING CAPITAL.**—Any asset (including a passive asset) which is held as a part of the reasonably required working capital needs of a trade or business shall be treated as used in the active conduct of a trade or business.

“(3) **PASSIVE ASSET.**—For purposes of this subsection, the term ‘passive asset’ means any—

“(A) cash or cash equivalents,

“(B) except to the extent provided by the Secretary, stock in a corporation or any other equity, profits, or capital interest in any entity,

“(C) evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative,

“(D) asset described in clause (iii), (iv), or (v) of section 351(e)(1)(B),

“(E) annuity,

“(F) real property used in 1 or more real property trades or businesses (as defined in section 469(c)(7)(C)),

“(G) asset (other than a patent, trademark, or copyright) which produces royalty income,

“(H) commodity,

“(I) collectible (within the meaning of section 401(m)), or

“(J) any other asset specified in regulations prescribed by the Secretary.

“(4) LOOK-THRU RULES.—

“(A) IN GENERAL.—If a nonbusiness asset of an entity consists of a 10-percent interest in any other entity, this subsection shall be applied by disregarding the 10-percent interest and by treating the entity as holding directly its ratable share of the assets of the other entity. This subparagraph shall be applied successively to any 10-percent interest of such other entity in any other entity.

“(B) 10-PERCENT INTEREST.—The term ‘10-percent interest’ means—

“(i) in the case of an interest in a corporation, ownership of at least 10 percent (by vote or value) of the stock in such corporation,

“(ii) in the case of an interest in a partnership, ownership of at least 10 percent of the capital or profits interest in the partnership, and

“(iii) in any other case, ownership of at least 10 percent of the beneficial interests in the entity.

“(5) COORDINATION WITH SUBSECTION (B).—Subsection (b) shall apply after the application of this subsection.

“(e) LIMITATION ON MINORITY DISCOUNTS.—For purposes of this chapter and chapter 12, in the case of the transfer of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092), no discount shall be allowed by reason of the fact that the transferee does not have control of such entity if the transferee and members of the family (as defined in section 2032A(e)(2)) of the transferee have control of such entity.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

Amend the title so as to read: “A bill to amend the Internal Revenue Code of 1986 to retain the estate tax with an immediate increase in the exemption, to repeal the new carryover basis rules in order to prevent tax increases and the imposition of compliance burdens on many more estates than would benefit from repeal, and for other purposes.”.